

HOUSE BILL 267

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Yvette Herrell

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO STATE GOVERNMENT; AMENDING A SECTION OF THE HUMAN SERVICES DEPARTMENT ACT TO REQUIRE CERTAIN BACKGROUND CHECKS AND PROCEDURES FOR HUMAN SERVICES DEPARTMENT PERSONNEL; PROVIDING A PENALTY HHC→; **DECLARING AN EMERGENCY**←HHC.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for

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the operation of the department. It is [~~his~~] the secretary's duty to manage all operations of the department and to administer and enforce the laws with which [~~he~~] the secretary or the department is charged.

B. To perform [~~his~~] duties of office, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Human Services Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and [~~regulations~~] rules;

(2) delegate authority to subordinates as [~~he~~] the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units [~~he~~] the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the

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compensation of those persons necessary to discharge [~~his~~] the secretary's duties;

(5) conduct background checks on department employees and prospective department employees that have or will have access to sensitive, confidential or private information of applicants for, and recipients enrolled in, public assistance programs; provided that:

(a) local law enforcement agency criminal history record checks shall be conducted on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information;

(b) record checks for any identified arrests shall be conducted through local law enforcement agencies in jurisdictions where the subject has lived, worked or attended school within the last five years preceding the record check;

(c) federal bureau of investigation fingerprinting shall be conducted on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information;

(d) for the purpose of conducting a national agency background check, the department shall submit to the department of public safety and the federal bureau of

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investigation a fingerprint card for each of the following personnel who have or will have access to federal tax information: 1) employees; 2) prospective employees; 3) contractors; 4) prospective contractors; 5) subcontractors; and 6) prospective subcontractors;

(e) the department shall conduct a check for eligibility to legally work as a citizen or legal resident of the United States on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information. The department shall complete a citizenship or residency check for each new employee and any employee with expiring employment eligibility and shall document and monitor the employee's citizenship or residency status for continued compliance;

(f) criminal history records obtained by the department pursuant to the provisions of this paragraph and the information contained in those records are confidential, shall not be used for any purpose other than conducting background checks for the purpose of determining eligibility for employment and shall not be released or disclosed to any other person or agency except pursuant to a court order or with the written consent of the person who is the subject of the records;

(g) a person who releases or discloses

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criminal history records or information contained in those records in violation of the provisions of this paragraph is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(h) the secretary shall adopt and promulgate rules to establish procedures to provide for background checks, and criteria according to which background checks are evaluated, for all present and prospective personnel identified in the provisions of this paragraph;

(i) contractors, prospective contractors, subcontractors and prospective subcontractors shall bear any costs associated with ordering or conducting background checks pursuant to this paragraph; and

(j) a department employee or prospective department employee who is denied employment or terminated employment based on information obtained in a background check shall be entitled to review the information obtained pursuant to this paragraph and to appeal the decision;

[~~(5)~~] (6) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution [~~he~~] the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

[~~(6)~~] (7) conduct research and studies that

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will improve the operations of the department and the provision of services to the citizens of the state;

[~~(7)~~] (8) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

[~~(8)~~] (9) prepare an annual budget of the department;

[~~(9)~~] (10) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies;

[~~(10)~~] (11) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary, except as provided in Section 9-8-9 NMSA 1978;

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[~~(11)~~] (12) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

[~~(12)~~] (13) require performance bonds of such department employees and officers as [~~he~~] the secretary deems necessary as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable [~~and~~] procedural rules [~~and regulations~~] as may be necessary to carry out the duties of the department and its divisions. No rule [~~or regulation~~] promulgated by the director of any division in carrying out the functions and duties of the

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division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no ~~[regulation]~~ rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by ~~[him]~~ the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the ~~[regulation]~~ rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed ~~[regulation]~~ rule or proposed amendment or repeal of an existing ~~[regulation]~~ rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. In the event the secretary anticipates that adoption, amendment or repeal of a rule ~~[or regulation]~~ will be required by a cancellation, reduction or suspension of federal funds or order by a court of competent jurisdiction:

(1) if the secretary is notified by appropriate federal authorities at least sixty days prior to the effective date of such cancellation, reduction or termination of federal funds, the department is required to

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promulgate [~~regulations~~] rules through the public hearing process to be effective on the date mandated by the appropriate federal authority; or

(2) if the secretary is notified by appropriate federal authorities or court less than sixty days prior to the effective date of such cancellation, reduction or suspension of federal funds or court order, the department is authorized without a public hearing to promulgate interim rules [~~or regulations~~] effective for a period not to exceed ninety days. Interim [~~regulations~~] rules shall not be promulgated without first providing a written notice twenty days in advance to providers of medical or behavioral health services and beneficiaries of department programs. At the time of the promulgation of the interim rules [~~or regulations~~], the department shall give notice of the public hearing on the final rules [~~or regulations~~] in accordance with Subsection E of this section.

G. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act, interim rulemaking shall be

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conducted pursuant to Subsection E of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the department shall also send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules [~~and regulations~~] promulgated pursuant to the provisions of this subsection shall be in effect not less than five days after the public hearing;

(4) rules [~~and regulations~~] promulgated pursuant to the provisions of this subsection shall not be in effect for more than ninety days; and

(5) if final rules [~~and regulations~~] are necessary to replace the interim rules [~~and regulations~~], the department shall give notice of intent to promulgate final rules [~~and regulations~~] at the time of notice herein. The final rules [~~and regulations~~] shall be promulgated not more than forty-five days after the public hearing and filed in accordance with the State Rules Act.

H. At the time of the promulgation of the interim rules [~~or regulations~~], the department shall give notice of the public hearing on the final rules [~~or regulations~~] in accordance with Subsection E of this section.

I. The secretary shall ensure that any behavioral health services, including mental health and substance abuse

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services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

J. All rules [~~and regulations~~] shall be filed in accordance with the State Rules Act."

HHHC→SECTION 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.←HHHC